C.S. 1002

(1) (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR
CHHATTISGARH

WRIT PETITION NO. 3294 /2004

K.M. Kabir, No. 914521346 Constable,
S/o- Late K.M. Mohammed,
Aged about 35 years,
Presently Working as Constable
CISF Unit Bhilai Steel Plant,
Bhilai, Distt. Durg,
Chhattisgarh. **PETITIONER**

VERSUS

1. Union of India,
Through- Directorate General,
Central Industrial Security Force,
Ministry of Home Affairs,
Block No. 13, CGO's Complex,
Lodhi Road, New Delhi-03.

2. Inspector General(NS)
CISF, Camp, Saket,
New Delhi.

3. Commandant/Dy. Commandant,
CISF Unit, Bhilai Steel Plant,
Bhilai, Distt. Durg,
Chhattisgarh.

4. Assistant Commandant/JAO,
CISF Unit, Bhilai Steel Plant,
Bhilai, Distt. Durg,
Chhattisgarh. **RESPONDENTS**

Copy Received
17/09/04
Steno to
VINAY HARIT
Addl. Central Government Standing Counsel
CHHATTISGARH HIGH COURT

P.R. No. 3355/04
Presented by Shri Pankaj Shrivastava
dated 17-9-04

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT IN THE NATURE OF MANDAMUS, CERTIORARI ETC.

(77)

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. No.3294/2004

K.M. Kabir

Vs.

Union of India and others

O R D E R

Post for 01.08.2001

Sd/-
Sunil Kumar Sinha
Judge

78

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. No.3294/2004

K.M. Kabir

Vs.

Union of India and others

Shri Pankaj Shrivastava, counsel for the petitioner.

Shri S.K. Beriwal, counsel for the respondents.

O R D E R
(01.8.2005)

Sunil Kumar Sinha, J,

By way of this writ petition, the petitioner has challenged the legality of his transfer order dated 17.7.2004 and has also challenged the order of dismissal of his representation dated 30.8.2004.

(2) The petitioner is a constable in Central Industrial Security Force (C.I.S.F). He joined the service on 31st January1991. He belongs to Kerala (South Zone) and is continuously working in C.I.S.F. Unit Bhilai Steel Plant, Bhilai, Distt. Durg (C.G) since 1991. During this period, for one year from 1998 to 1999 he was posted in Chandrapur. By impugned order dated 17.7.2004 the petitioner has been transferred from C.S.I.F. Unit Bhilai to 8th Res. Batallion, Kisthward, Jammu & Kashmir. The wife of the petitioner namely Smt.Prabha Kabir P.No.151507 is working as Junior Staff Assistant in Central Accounts Section of Finance & Accounts Department of Bhilai Steel Plant for the last 11 years. In this manner, the husband and wife were posted at one place.

(3) The petitioner has challenged the validity of transfer on the ground that as per some circular of the Office of the Director

General, C.I.S.F. dated 30th of June 1994, guidelines have been issued and according to those guidelines some periods have been specified for posting of the constable and inspectors in their Home Zone and out of home zone. The details have been mentioned in Para 5.3 of the petition. The petitioner contends that the aforesaid transfer order is against the said guidelines and the same can be interfered by this court. He has also challenged the order on the basis of some other guidelines which, according to the petitioner, prescribes that as far as possible, the husband and wife should be posted at the same station to enable them to lead normal family life. Besides the above, he has also challenged this order on account of illness of his wife who is facing some Gynecological problem since 2001 and is also a patient of high blood pressure. So far as challenge to the order of rejection of representation is concerned, it is stated that the same is erroneous and it has not been decided on the guidelines of the department.

(4) The return on behalf of the respondents has been filed. The respondents have contended that as per service records the petitioner belongs to Kerala state (south zone). He was posted in Bhilai from 15.10.1991 to 31.5.1998 and thereafter from 02.9.1999 to 21.9.2004. In between this period he also served at Chandrapur from 01.6.1998 to 01.9.1999. They have further contended that the Circular No.16 of 1994 annexed as Annexure P-2 by the petitioner has been superseded by Circular No. Estt. II, 01/97 dated 02/21-7-1997. It is submitted that the petitioner was appointed as Constable in C.I.S.F. which is Group (C) post. As provided in section 21 of C.I.S.F. Amendment Act 2001 and Rule 72 of C.I.S.F. Amendment Rules 2001, the services of the members of the Force are transferable at any place within India for which some agreement is also executed while recruiting the personnel in C.S.I.F. According to the respondents, as per the present posting guidelines Annexure R-1 referred to above, the petitioner is eligible for 3 years posting only at one station/unit. The petitioner has already completed more than 11 ½ years of service at Bhilai, therefore, his posting from Bhilai to Kistwar, Jammu & Kashmir, is

according to the present posting policy in the force. The petitioner being the member of armed force of the Union has no ground to challenge the order of posting.

(5) I have heard learned counsel for the parties at length and have also perused the records of the writ petition.

(6) The law in relation to the transfer is now well settled. Now it is clear that the order of transfer, which is an incidence of service, can only be interfered with if the same is shown to be arbitrary or malafide or passed in infraction of any prescribed norms of principles governing the transfers. If the transfer is neither malafide nor arbitrary and it does not infringe any right of employee the same cannot be interfered by the Courts in routine. The case would have been differently governed when the employee claims that he was working on a non-transferable post and the transfer was not an incidence of his service.

(7) Referring to various earlier pronouncements, the Apex Court, has observed in para 4 of the judgment rendered in the matter of ***Kendriya Vidya Sanghatan –vs- Damodar Prasad Pandey (2004 AIR SCW pg.5563)*** as follows:-

> "Transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or visited by malafide or infraction of any prescribed norms of principles governing the transfer (*See Ambani Kanta Ray –Vs- State of Orissa, 1995 (Suppl) 4 SCC 169*). Unless the order of transfer is vitiated by mala fide or is made in violation of operative guidelines, the Court cannot interfere with it. (*See Union of India –Vs- S.L. Abbas, AIR 1993 SC 2444*). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fide or is made in violation of operative any guidelines or rules the Courts should not ordinarily interfere with it. In *Union of India –Vs- Janardan Debanath & anr. (2004) 4 SCC 245* it was observed as follows:

> "No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/ management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd., –Vs- Shri Bhagwan, (2001) 8 SCC 574".

(8) If we examine the case of the petitioner in light of the aforesaid enunciation of the Apex Court, it would appear that the petitioner has not claimed for cancellation of his transfer either on the ground of mala fide or on the ground of arbitrariness or on any other incidental grounds like extraneous consideration and exceptional cases etc. No pleadings in relation to malafide or arbitrariness or infringement of any statutory rule have been made by the petitioner. The petitioner has also not pleaded that he is working on a non-transferable post. If the petition itself is lacking on these grounds, certainly the interference of the Court would not be called for and the petition is liable to be dismissed on this count alone.

(9) So far as the grounds of personal difficulties of the petitioner like posting of husband and wife at one place and health condition of the wife etc., are concerned, this Court is of the opinion that they could hardly be a ground for interference with the orders of transfer by a court of law. These are the fields of considerations of

the employer for his employee. The employer has to work on the line of welfare of his employee and if the employee faces some personal difficulties it is always open for him to go to the employer and submit his difficulties and if the law permits, the employer would look into those difficulties of the employee and as far as possible it should be reduce to non so as to keep the employee in a comfortable position for rendering an excellent service in favour of the employer. These are not the grounds for consideration in a court of law.

(10) So far as the guidelines are concerned, counsel for the petitioner could not point out as to how the transfer is vitiated according to the said guidelines. The subsequent guidelines were issued after suppression of the earlier Circular in the year 1997. The petitioner has based his claim on the earlier Circular of 1994 for which the respondents have stated on oath that the said circular has been superseded and the new Circular vide Annexure R-1 has been brought into force. It is important to mention that no rejoinder to the said return of the respondents has been filed by the petitioner to controvert this situation. More over, as has been held in the matter of ***Union of India –Vs- S.L. Abbas AIR 1993 S.C. Pg. 2444***, the guidelines issued by the Government do not confer upon an employee legally enforceable right and the order of transfer made without following the guidelines cannot be interfered with by the Court unless it is vitiated by malafides or is made in violation of statutory provisions. The petitioner cannot take advantage of the circular of 1994 and the arguments of counsel for the petitioner on this ground cannot be accepted.

(11) The persons working in the force, like C.I.S.F. in this case, carry more responsibility than the persons working in general civil services. Their postings are made in accordance with the security oriented necessity of the department. Their cases of posting cannot be viewed with a general eye. In the opinion of this Court, no case for interference is made in favour of the petitioner either to

quash the transfer order or to quash the order passed on representation.

The petition has no merit and is accordingly dismissed.

No order as to cost.

Sd/-
Sunil Kumar Sinha
Judge

Rao